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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/356,771	07/16/1999	JOSEPH E. PORCELLI	1310-2	8276

7590 03/04/2004

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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT PAPER NUMBER

3632

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/356,771

Applicant(s)

PORCELLI, JOSEPH E. 

Examiner

Naschica S Morrison

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is the sixth Office Action for serial number 09/356,771, Car and Truck Beverage Holder, filed on July 16, 1999. Claims 18 and 20-22 are pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21 and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention or in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Amended claim 21 now recites the tray and two of the fingers being formed as a single unitary member; however the claim is directed toward the second embodiment shown in Figures 4 and 5 which was not originally described as being formed as a unitary member (see especially lines 1-4 on page 11 of the instant specification).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,938,160 to Hartmann et al. (Hartmann) in view of U.S. Patent Des. 355,336 to Dickey et al. (Dickey), and further in view of DE 197 29 689. Regarding claims 18 and 20, Hartmann discloses a unitary plastic beverage container holder comprising: a basket (14) having two side walls (in Fig. 3, defined as the left and right portions of 10 when split into equal halves) each having a top edge (at 15 - Fig. 1) collectively defining a top end opening, the two side walls disposed opposite one another and each having at least two openings (the openings are separated by member 14 shown in Fig. 1) therethrough disposed beneath the top edge border, four resilient fingers (16) coupled to the basket and depending from one of the top edge borders such that they each extend downwardly and inwardly into a different one of the side wall openings, and a generally U-shaped hook (18) attached to and extending above the basket. Hartmann does not disclose the basket and opening being rectangular. Dickey discloses a unitary container holder (Fig. 1) comprising a rectangular basket defining a rectangular opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the basket of Hartmann to be rectangular in shape (wherein it includes the at least two oppositely disposed side walls each having the two openings and corresponding resilient fingers) because one would have been motivated to provide a beverage container holder for rectangular beverage containers

Art Unit: 3632

as taught by Dickey (Claim, lines 1-2). Hartmann in view of Dickey also fails to disclose the fingers having a V-shaped profile. DE 197 29 689 discloses a beverage container holder (Fig. 1) including a plurality of retaining members (7) having a V-shaped profile when viewed in a vertical plane with the point of the V (see Figure 3) extending towards a central opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the resilient fingers of Hartmann to have a V-shaped profile because one would have been motivated to provide a quick and efficient means for securely holding a container having a significantly smaller diameter than the holder as inherently taught by DE 197 29 689 (see also Abstract).

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,928,865 to Lorence et al. (Lorence) in view of Dickey in view of U.S. Patent 5,297,767 to Miller et al. (Miller) and further in view of DE 197 29 689. Regarding claim 21 (as best understood), Lorence discloses a beverage container holder comprising: a rectangular tray (62) including two openings (68) each having a top edge border and a supporting member (70) rotatably coupled to the tray and pivotable into a position located below the openings (Fig. 1). Lorence does not teach the openings being rectangular. Dickey discloses a beverage container holder including a rectangular opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the openings of Lorence to be rectangular in shape because one would have been motivated to provide a holder for rectangular beverage containers as taught by Dickey (Claim, lines 1-2). Lorence in view of Dickey also fails to disclose a plurality of resilient fingers extending inwardly within the

Art Unit: 3632

openings. Miller discloses a beverage container holder (Fig. 2) comprising two openings (31,41) and two sets of four resilient fingers (35, 45) depending from the top wall and each extending within an opening (31, 41). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified each of the openings of Lorence by including at least four resilient fingers therein because one would have been motivated to provide a means for snugly holding a container to the holder as taught by Miller (col. 2, lines 23-30). Lorence in view of Dickey in view of Miller teaches the holder as applied above, but does not disclose the tray and fingers being formed as a single unitary member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the tray and fingers of Lorence to be a unitary member because one would have been motivated to reduce assembly time and manufacturing costs; and furthermore, one-piece construction, in place of separate elements fastened together, is well known and within the level of ordinary skill in the art. Lorence in view of Dickey in view of Miller also fails to teach the fingers being V-shaped. DE 197 29 689 discloses a beverage container holder (Fig. 1) including a plurality of retaining members/fingers (16) having a V-shaped profile when viewed in a vertical plane with the point of the V (see Figure 3) extending towards a central opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the resilient fingers of Miller to have a V-shaped profile because one would have been motivated to provide a quick and efficient means for securely holding a container having a significantly smaller diameter than the holder as inherently taught by DE 197 29 689 (see also Abstract).

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lorence in view of Dickey in view of Miller in view of DE 197 29 689, and further in view of U.S. Patent 4,530,480 to Pratt. Regarding claim 22, Lorence in view of Dickey in view of Miller in view of DE 197 29 689 discloses the beverage container holder as applied above, but does not disclose the supporting member (70) being spring biased into the position located below the opening. Pratt discloses a container holder (Fig. 2) having a spring means (60) for biasing a support member (44) into a lowered position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the holder of Lorence by including a spring means because one would have been motivated to permit removal of the beverage container and positioning of the support member for collapse for storage as taught by Pratt (col. 5, lines 2-11).

### ***Response to Arguments***

Applicant's arguments filed 2/14/03 have been fully considered but they are not persuasive. In response to applicant's argument that DE 297 29 689 teaches that fingers (7) "have a flat surface contacting the container" and thus teaches away from resilient, V-shaped fingers having point contact with a container, examiner respectfully disagrees. Applicant has amended Figure 3 of DE 297 29 689 to support applicant's assertion; however this depiction is not persuasive. Specifically, it is clear from original Figure 3 and the abstract of DE 297 29 689 that a container having a diameter which is smaller than that of bottom surface (3) but slightly larger than the opening created by the point of the V-shaped fingers (7) would create a resilient and releasable grasp of the

Art Unit: 3632

container by the fingers (7) at the point of the V. Additionally, applicant further asserts that DE 297 29 689 "was designed to hold containers in a circular holder *through contact of multiple flat surfaces (16)...*"; however applicant has not provided specific support of this position that can be found in the specification and drawings of DE 297 29 689.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 2004/0021048 to Schaal and US 2003/0106976 to Then et al. disclose container holders having V-shaped fingers.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

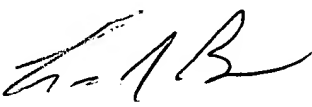


Art Unit: 3632

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.

  
Naschica S. Morrison  
Patent Examiner  
Art Unit 3632  
2/23/04

  
LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER